IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 425 of 2004.

Judgement reserved on: 1.5.2007

Date of decision: 7.5.2007.

Hari Singh ….. **Appellant.**

Vs.

Jagdish Ram & ors. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Dalip Sharma, Advocate.

For the Respondents : Mr. K.D.Sood, Advocate.

Kuldip Singh, Judge.

The plaintiff is in appeal against the judgement and decree, dated 16.2.2004, passed by learned District Judge, Kangra at Dharamshala, in Civil Appeal No. 131-D/XIII/2002, dismissing the appeal of the plaintiff filed against the judgement and decree, dated 30.7.2002, passed by learned Sub Judge Ist Class, Court No.III, Dharamshala.

2. The brief facts as emerged from the plaint are that plaintiff filed a suit for permanent prohibitory and mandatory injunction against the defendants from changing the nature of the land, raising construction, dismantling the culvert and other acts of wastage in land comprised in khasra No. 302, measuring 0-03-60 Hects, khasra No. 483, khasra No. 494 measuring 0-19-15 Hects., situate at Mohal

---

Whether the reporters of the local papers may be allowed to see the Judgment?

Parol, Mauza Jheol, Tehsil Dharamsala, District Kangra, vide jamabandi 1990-91 as per site plan. It has also been submitted that in case the defendants succeed in raising construction and changing the nature of the suit land, then same may be ordered to be restored to its original state by way of mandatory injunction.

3. The further case of the plaintiff is that khasra No. 302 is a water channel, khasra No. 483 is a general path and khasra No. 494 is in possession of plaintiff and other co-sharers. He has constructed five shops on khasra No. 494. The water channel and public path are in between the shops of the plaintiff and the P.W.D. road.

4. The defendants have threatened to raise construction on road, water channel and public path. They have threatened to divert the water channel and path from the land of the plaintiff i.e. khasra No. 494. It has also been alleged that defendants have constructed shop overnight on the suit land and are further threatening to raise more construction on rest of the suit land. The defendants have no right title or interest in the suit land. On these grounds, the plaintiff filed the suit.

5. The defendants contested the suit by filing written statement-cum-counter claim. The defendants have taken several preliminary objections. On merits, it has been submitted that khasra No. 302 Kuhal is owned and possessed by them. The khasra No. 483 is a road and a part of it has been encroached by the plaintiff by constructing shops. There is no public path in between the water channel, shops and P.W.D. road. The defendants had taken

demarcation and it was found that plaintiff had stopped the Kuhal in khasra No. 302 and diverted the same and removed the signs of Kuhal from khasra No. 302. The defendants denied the claim of the plaintiff and by way of counter claim prayed issuance of mandatory injunction to the plaintiff to restore the Kuhal on khasra No. 302 and also the path on khasra No. 483 to the original position by removal of obstruction and superstructure, if any. A prayer has also been made restraining the plaintiff from interfering on khasra Nos. 302 and 483.

6. The learned Sub Judge dismissed the suit of the plaintiff as well as counter claim of the defendants by way of common judgement and decree dated 30.7.2002. The plaintiff filed an appeal against the decision, dated 30.7.2002, which has been dismissed by the learned District Judge on 16.2.2004. Thus plaintiff is in second appeal.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The appeal has been admitted on the following substantial question of law:-

> Whether the Findings recorded by the learned trial court and the first Appellate Court are dehors the evidence on record?

9. The two courts below after appreciation of the evidence have dismissed the suit of the plaintiff. The courts below have considered and appreciated the evidence and only thereafter recorded the findings that plaintiff is not entitled to any relief.

10. The learned counsel for the appellant has failed to point out how the findings recorded by two courts below are dehors the evidence on record. There is evidence on record which the courts below have appreciated properly. In second appeal appreciation of the evidence is not permissible. It is not a case where the impugned judgement and decree are perverse. It is not a case of no evidence. The defendants are recorded in ownership and possession of khasra No. 302 alongwith other co-owners, vide jamabandi 1995-96 Ex. D-1. Khasra No. 483 is recorded as public road, vide Ex. D-2 jamabandi 1995-96. The plaintiff is owner of land comprised in khasra No. 494, which is in possession of co-owners, vide Ex. D-3 jamabandi 1995-96. Plaintiff as PW 3 has stated that he has constructed shops on khasra No. 494, which is approachable through new public road. The learned District Judge after appreciation of the evidence has recorded the findings that defendants have not obstructed the access to the shops of plaintiff on khasra No. 494. Plaintiff himself is guilty of encroaching upon a part of the public path and is not entitled to discretionary relief of injunction. The learned District Judge has considered the statements of PW 1 to PW 7 and DW 1, DW 2 alongwith other documentary evidence on record in the impugned judgement and decree. After considering the evidence, the learned District Judge has categorically recorded a finding that the decree passed by the trial court requires no interference. The learned counsel for the plaintiff has failed to make out any case for interference. On the basis of material on record it cannot be said that two courts below recorded findings dehors the evidence on record.

The substantial question of law is decided against the appellant-plaintiff.

11. No other point was urged.

12. In view of above discussion, the appeal is dismissed. The impugned judgement and decree are confirmed with no orders as to costs.

May 7, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**